IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

Bail Appl..No. 3854 of 2007()

CRIME NO.218 OF 2007 OF MUKKAM POLICE STATION

: PETITIONER/ACCUSED:

K. BABU RAJA, S/O. GOPI,
KAMMATH HOUSE, PUZHIYORAMMEL, P.O.KUMARANALLOOR,
(VIA) MUKKAM, KOZHIKODE.

BY ADV. SRI.P.S.SREEDHARAN PILLAI

RESPONDENTS: COMPLAINANT/STATE:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.3854 of 2007

Dated this the 27th day of June, 2007

ORDER

Application for anticipatory bail. Petitioner's wife committed suicide on 04.06.2007. Crime was registered initially under the caption “unnatural death”. Investigation is in progress. The caption has been altered and allegations of the petitioner having committed an offence punishable under Section 498 A I.P.C and 306 I.P.C have been included. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is innocent of the allegations. The petitioner is ill. He has undergone a couple of surgeries. He has infant children of tender age to be looked after. Undeserved trauma of arrest and detention of the petitioner will cause great prejudice and hardship to the petitioner. In these circumstances, it is prayed that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor opposes the application. There are telltale circumstances indicating matrimonial cruelty of the culpable variety, though there is nothing specific and tangible to show that the petitioner had intended the result of commission of suicide by his wife. In these circumstances, even considering the allegation as

one under Section 498 A I.P.C alone, the petitioner is not entitled to grant of anticipatory bail, submits the learned Public Prosecutor.

4. I find merit in the opposition by the learned Public Prosecutor. I find no circumstances justifying the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case, where the petitioner must surrender before the learned Magistrate and seek regular bail in the normal and ordinary course. I agree with the learned counsel for the petitioner that it can be clarified that the learned Magistrate, when he considers the application for bail, need consider the case as one in which allegations are raised only under Section 498 A I.P.C. To that extent and to that extent alone, can this petition succeed.

5. In the result, this Crl.M.C is, dismissed with the observation that the petitioner shall be at liberty to surrender before the learned Magistrate and seek bail reckoning the allegation as only one under Section 498 A I.P.C. The learned Magistrate, needless to say, must consider such application for bail on merits, in accordance with law and expeditiously, if such application is filed after giving sufficient prior notice to the prosecutor in charge of the case.

(R.BASANT, JUDGE)

rtr/-